

Wage and Hour Division, Labor

§ 579.5

his or her own child or a child in his or her custody under the age of 16 years in an occupation *other than*: (i) Manufacturing or (ii) mining or (iii) an occupation found and declared by the Secretary of Labor to be particularly hazardous for the employment of children between the ages of 16 and 18 years or detrimental to their health or well-being, and an employer may lawfully employ a young worker between 14 and 16 years of age in an occupation permitted and under conditions prescribed by 29 CFR part 570, subpart C;

(4) That, with respect to violations described in paragraph (a)(2) of this section resulting from employment of minors in agriculture as described in paragraph (b)(2)(iii), a parent or person standing in place of a parent may lawfully employ on a farm owned or operated by such parent or person, his or her own child or a child in his or her custody under the age of 16 years in an occupation in agriculture found and declared by the Secretary of Labor to be particularly hazardous for the employment of children below such age;

(5) That, with respect to violations described in paragraph (a)(2) of this section resulting from employment of minors in agriculture as described in paragraph (b)(3)(ii), employment of minors 12 or 13 years of age is lawful under the conditions prescribed in paragraph (b)(3)(ii)(A) of this section and employment of minors under 12 years of age is lawful under the conditions prescribed in paragraph (b)(3)(ii)(B) of this section; and

(6) That, with respect to violations described in paragraph (a)(2) of this section resulting from employment of minors in agriculture as described in paragraph (b)(4), employment of minors under 12 years of age is lawful under the conditions prescribed in paragraph (b)(4)(i) or (ii) of this section.

[40 FR 25792, June 18, 1975, as amended at 41 FR 26836, June 29, 1976; 69 FR 75405, Dec. 16, 2004]

§ 579.4 [Reserved]

§ 579.5 Determining the amount of the penalty and assessing the penalty.

(a) The administrative determination of the amount of the civil penalty for

each employee who was the subject of a violation of section 12 or section 13(c) of the Act relating to child labor or of any regulation under those sections will be based on the available evidence of the violation or violations and will take into consideration the size of the business of the person charged and the gravity of the violations as provided in paragraphs (b) through (d) of this section. The provisions of section 16(e)(1)(A)(ii) of the Fair Labor Standards Act, regarding the assessment of civil penalties not to exceed \$50,000 with regard to each violation that causes the death or serious injury of any employee under the age of 18 years, apply only to those violations that occur on or after May 21, 2008.

(b) In determining the amount of such penalty there shall be considered the appropriateness of such penalty to the size of the business of the person charged with the violation or violations, taking into account the number of employees employed by that person (and if the employment is in agriculture, the man-days of hired farm labor used in pertinent calendar quarters), dollar volume of sales or business done, amount of capital investment and financial resources, and such other information as may be available relative to the size of the business of such person.

(c) In determining the amount of such penalty there shall be considered the appropriateness of such penalty to the gravity of the violation or violations, taking into account, among other things, any history of prior violations; any evidence of willfulness or failure to take reasonable precautions to avoid violations; the number of minors illegally employed; the age of the minors so employed and records of the required proof of age; the occupations in which the minors were so employed; exposure of such minors to hazards and any resultant injury to such minors; the duration of such illegal employment; and, as appropriate, the hours of the day in which it occurred and whether such employment was during or outside school hours.

(d) Based on all the evidence available, including the investigation history of the person so charged and the degree of willfulness involved in the